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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1959

No. 381

CONE MILLS CORPORATION,

Petitioner

v.

TEXTILE WORKERS UNION OF AMERICA

Respondent

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

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Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit dated and entered in the above cause on 16 June 1959 (Appendix B), reversing a judgment of the United States District Court for the Middle District of North Carolina (Joint Appendix, p. 69).

## OPINIONS BELOW

The opinion of the Court of Appeals, which is appended to this petition as Appendix A, is not yet reported.

The opinion of the United States District Court is reported in 166 F. Supp. 654, and appears in the printed Joint Appendix (pp. 59-69).

## JURISDICTION

The judgment of the Court of Appeals sought to be reviewed was dated and entered on 16 June 1959 (Appendix B. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

## QUESTIONS PRESENTED

1. Whether, in an action brought by a union against an employer under sec. 301(a) of the Labor Management Relations Act of 1947, the District Courts of the United States have jurisdiction to render a money judgment for the benefit of the employees represented by the union upon an arbitration award adjudging liability against the employer for varying sums of money due the several thousand named individual employees involved, representing deferred wages for vacation or holiday pay, where no employee's claim is greater than $30.00 and no diversity of citizenship exists between the employer and the employees who are named in the complaint to receive such sums pursuant to the award.

2. Whether, if sec. 301 is held to vest jurisdiction in the United States District Court over the instant action brought by a union against an employer, sec. 301 to that extent is invalid, null and void as (a) being in violation of Article III, Section 2 of the Constitution of the United States; or (b) denying the petitioner equal protection of the law under the Fifth Amendment of the Constitution of the United States.

## STATUTES INVOLVED

The pertinent statutory and constitutional provisions involved are set forth in Appendix C as follows: Labor Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C. sec. 185; General Statues of North Carolina, sections 95-36.1, et seq.; Art. III, Section 2, and Fifth Amendment of U. S. Constitution.

## STATEMENT OF THE CASE

Petitioner, Cone Mills Corporation (hereinafter referred to as "the Company"), is a North Carolina corporation having textile manufacturing plants at Reidsville and

Greensboro, North Carolina, known as the Edna, White Oak and Proximity plants (J. A. 2). It manufactures cloth at these plants and its activities affect interstate commerce. The respondent, Textile Workers Union of America (hereinafter referred to as "the Union"), is a voluntary unincorporated labor organization and is recognized by the Company as the collective bargaining agent for the employees at its three named plants (J. A. 2).

The Company and the Union entered into collective bargaining agreements which were in full force and effect at all times relevant hereto (J. A. 2). The agreements provided that between 1 June and 1 September 1957 the Company agreed to give a one-week vacation with pay to the employees at these plants (J. A. 16). The Company closed the plants for one week in July 1956 and paid the employees therefor, and closed the Proximity and White Oak plants for a "Christmas-New Year's vacation period" and the Edna plant for "Christmas holidays," all for the period 21 December 1956 to 1 January 1957, but did not pay the employees therefor (J. A. 21-2).

Thereupon the employees at the three plants filed their claims for benefits with the Employment Security Commission of North Carolina for this week of unpaid inactivity. The claims were denied by the Commission on the ground that under the Employment Security Law of North Carolina employees are not entitled to benefits during a period of at least two weeks in a year when they are on vacation, and that "under the provision of the law it is the prerogative of the employer to grant a vacation at any time it sees fit" (J. A. 32). This ruling of the Commission was affirmed by the Supreme Court of North Carolina; *In re Southern*, 247 N. C. 544, 101 S. E. 2d 327 (Jan. 1958).

In January 1957 the Union filed written grievances at the three plants alleging that the Company had violated the agreements by declaring the one week vacation without pay, and requested that "all employees be paid for all time lost," or to "make the employees whole for their loss of money" (J. A. 47-9). These three grievances were carried through the grievance procedure and not having been settled satisfactorily to the Union, it then submitted them to arbitra-

tion. At the outset of the arbitration hearing on 23 July 1957 before a three man panel, the Company contended that the case was not arbitrable (J. A. 22). A majority of the panel entered its award on 11 September 1957, sustaining the grievances and awarding that:

> ". . . the Company is obligated to make the employees whole such damages as they sustained or shall sustain from such breach, namely, the amount of unemployment benefits which they fail to receive because of such breach." (J. A. 19).

After the Supreme Court of North Carolina affirmed in January 1958 the ruling of the Employment Security Commission that the employees were not entitled to benefits for the Christmas week, the Company advised the Union that it refused to abide by the arbitration award. On 9 April 1958 the Union brought the present action against the Company in the United States District Court for the Middle District of North Carolina alleging that the suit arose under sec. 301 of the Labor Management Relations Act and that the Company had violated the agreements by its refusal to abide by the arbitration award, with the result that "the plaintiff and the employees listed on Exhibits A, B and C attached hereto have been and are wrongfully denied the benefits of said contracts, Exhibits 1, 2 and 3 attached hereto" (J. A. 5). The complaint prayed affirmance and enforcement of the arbitration award, as well as a declaratory judgment that the award was final and binding upon the Company.

The Company filed its answer on 20 May 1958 in which it alleged as a defense that the district court lacked jurisdiction to grant the remedy requested, and specifically alleged that sec. 301 of the Labor Management Relations Act of 1947, insofar as it purports to vest jurisdiction of the instant action in the United States District Court, is invalid, null and void in violation of the Constitution of the United States. The answer also met the allegations of the complaint.

A pretrial order on 25 July 1958 provided that the parties had agreed that "the case might be submitted to and

decided by the Court on the basis of the pleadings and exhibits thereto and the additional stipulation which will be filed by the parties and that neither party desires to introduce any evidence, it being conceded that the rights of the parties are to be determined as a matter of law from the pleadings, exhibits and stipulations" (J. A. 55). A hearing was held before the District Court on 6 October 1958, and the Court entered its final judgment on 31 October 1958 dismissing the action for want of jurisdiction (J. A. 69). The Court did not pass upon the merits of the action.

On appeal, the Court of Appeals reversed (Appendix A), holding that since sec. 301 (a) has been construed by this Court in *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448, as conferring jurisdiction upon the district courts of the United States to grant specific performance to enforce an agreement to arbitrate unresolved grievances, "by parity of reasoning the Court should enforce arbitration awards, for this is but a short step in the development of a substantive federal law to meet the problems as they arise in this area." The Court of Appeals noted that the District Court had concluded that the instant case was controlled by the decision of this Court in *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U. S. 437, for the reason that in both cases the Union was seeking for the employees money due for past services, and while the Court conceded that such analogy was "not without persuasive force" yet it considered that the later decision in *Lincoln Mills* vested jurisdiction in the federal courts. The Court of Appeals did not specifically pass upon the constitutional issues as briefed and presented, although it did observe that this Court in *Lincoln Mlils* had found no substantial constitutional difficulty upon the record there presented. The Court noted that questions relating to the validity of the arbitration award were not being considered by it for the reason that the District Court did not reach them, and accordingly "they should be considered by the District Court upon the remand."[1]

[1]Obviously the court's ruling as to the enforceabililty of the arbitration award is "fundamental to the further conduct of the case." Cf. *United States v. General Motors Corp.*, 323 U. S. 373, 377 (1945); *Land v. Dollar*, 330 U. S. 731, 734 (1947).

## REASONS FOR GRANTING THE WRIT

This case presents important questions of federal laws as to the scope and constitutionality of sec. 301 (a) of the Labor Management Relations Act of 1947 to actions brought under that section to enforce arbitration awards rendered. The questions are of wide general interest and importance, requiring that their resolution be authoritatively declared by this Court.

*1. The Federal Questions Were Decided in a Way Probably in Conflict With Applicable Decisions of This Court.*

The decision of the Court of Appeals in the instant case concerns the same issue, and is controlled by the decision of this Court in *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U. S. 437 (1955). The instant action was brought by the Union to enforce personal rights of several thousand employees whose names are set forth in exhibits to the complaint. The award of the majority of the Board of Arbitrators was:

> "... that the Company is obligated to make the employees whole such damages as they sustained or shall sustain from such breach namely the amount of unemployment compensation which they fail to receive because of such breach" (J. A. 19).

If the award is enforced it would result in each of the employees involved receiving varying sums between $20 and $30. *Westinghouse* involved the same problem. In both cases the Company is alleged to have violated the contract by withholding a certain amount of pay due the employees. In both cases the employees were not made parties to the suit. In both cases the relief requested was for a recovery of money for distribution to the respective individual employees.

In *Westinghouse* this Court concluded that sec. 301 did not confer jurisdiction on the federal courts where an action is brought by a labor union on behalf of employees for accrued wages which the employer refuses to pay, allegedly

in violation of a collective bargaining agreement between the union and the employer.

Mr. Justice Frankfurter stated in his opinion (p. 460):

> "There was no suggestion that Congress, at a time when its attention was directed to congestion in the federal courts, particularly in the heavy industrial areas, intended to open the doors of the federal courts to a potential flood of grievances based upon an employer's failure to comply with the terms of a collective agreement relating to compensation, terms peculiar in the individual benefit which is their subject matter and which, when violated, give a cause of action to the individual employee. The employees have always been able to enforce their individual rights in the state courts. (cases cited) . . .
>
> "Nowhere in the legislative history did Congress discuss or show any recognition of the type of suit involved here, in which the union is suing on behalf of employees for accrued wages. Therefore, we conclude that Congress did not confer on the federal courts jurisdiction over a suit such as this one."

In a concurring opinion, Mr. Chief Justice Warren and Mr. Justice Clark noted (p. 461):

> "For us the language of sec. 301 is not sufficiently explicit nor its legislative history sufficiently clear to indicate that Congress intended to authorize a union to enforce in a federal court the uniquely personal right of an employee for whom it had bargained to receive compensation for services rendered his employer."

And Mr. Justice Reed wrote in his concurring opinion:

> "The reason, I think, that this union cannot recover from the employer in this suit under sec. 301 is that the claim for wages for the employees arises from separate hiring contracts between the

> employer and each employee. The union does not undertake to do work for the employer or even to furnish workers. The duty, if any there be, to pay wages to an employee arises from the individual contract between the employer and employee, not from the collective bargaining agreement. Therefore there is set out no violation of a contract between an employer and a labor organization as is required to confer jurisdiction under sec. 301. The facts show an alleged violation of a contract between an employer and an employee — a situation that is not covered by the statute."

If *Westinghouse* were the only ruling by this Court dealing with the scope of sec. 301 then obviously the district courts would lack jurisdiction of an action to enforce an arbitration award such as presented here. The Court of Appeals considered, however, that *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448 "cast a clearer light on this field of litigation," and that its teaching was "to place the enforcement of the arbitration clauses of labor contracts in the hands of the federal courts even if the employees are the ultimate beneficiaries" (Appendix A, p. A-5). Perhaps this was the intended effect of *Lincoln Mills* but there exists considerable confusion in the minds of the lower courts, labor specialists and scholars, and the parties to collective agreements as to just what vitality *Westinghouse* possesses in the light of *Lincoln Mills*. It would appear that the Court itself considers that *Lincoln Mills* did not change the ruling of *Westinghouse* in this respect for Mr. Justice Douglas stated in footnote 6 (p. 456) of his opinion for the majority that Westinghouse "is quite a different case. There the Union sued to recover unpaid wages on behalf of some 4,000 employees. The basic question concerned the standing of the union to sue and recover on those individual employment contracts." And Mr. Justice Burton, with whom Mr. Justice Harlan joined, said in a concurring opinion (p. 460):

> "The District Court had jurisdiction over the action since it involved an obligation running to a

> union—a union controversy—and not uniquely personal rights of employees sought to be enforced by a Union. Cf. Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp. . . ."

Confusion and uncertainty prevail in this area of labor relations. Some courts have apparently construed this Court's holding in Westinghouse narrowly. See, for example, Circuit Judge Learned Hand's analysis of that decision in *Council of Western Electric Technical Employees v. Western Electric Co.*, 238 F. 2d 892, 895 (C. A. 2nd Cir.); and another court considers that Lincoln Mills "beat a retreat from Westinghouse" (*IBEW v. Mississippi Valley Electric Co.*, *F. Supp* ; 44 LRRM 2674 - (D. C. La.) By contrast, other courts have concluded that Westinghouse's teaching that sec. 301 does not confer jurisdiction over an action by a union to enforce personal rights of employees was not modified, overruled or eroded by Lincoln Mills. Thus, "In our opinion, neither the result nor the rationale of the recent decision in Lincoln Mills undermines the authority of the Westinghouse case"—*Silverton v. Valley Transit Cement Co., Inc.*, 249 F. 2d 409, 410 (C. A. 9th Cir.); "We find nothing here that modifies Westinghouse"—*Local Lodge* 2040, *IAM v. Servel, Inc.*, F. 2d 44 LRRM 2340 (C.A. 7th Cir. - 1959). Still others, including the Fourth Circuit, apparently concede that there is real ground for the uncertainty that exists on the subject, saying (Appendix A, p. A-7):

> "Confronted by these two important decisions the District Judge was called on to decide which controlled the pending case, and he reached the conclusion that *Westinghouse* was the more apposite since in the pending case, as in *Westinghouse*, the ultimate goal of the union was to recover for its constituents money due them for past services. This analogy, it must be conceded, is not without persuasive force, but we think that it is not controlling in view of the conclusion in the later decision that Congress intended to

> place the enforcement of the arbitration clauses of labor contracts in the hands of the federal courts even if the employees are the ultimate beneficiaries."

And the Court of Appeals for the Sixth Circuit was divided on the precise issue of whether the federal courts have jurisdiction to enforce arbitration awards, Circuit Judge Miller deciding in the negative and Judge Martin deciding in the affirmative: *A. L. Kornman Company v. Amalgamated Clothing Workers*, 264 F. 2d 733 (pet. for cert. No. 131, this term).

II. *The Decision is Probably in Conflict With the Decisions of Other Courts of Appeals on the Same Matter.*

The decision of the Court of Appeals in the instant case probably conflicts with the decisions of the Court of Appeals for several circuits:

In *Communication Workers of America v. Ohio Bell Tel. Co.*, 265 F. 2d 221 (C.A. 6th Cir. - 1959), the union brought an action against the employer seeking vacation pay for its employees under a contract between the parties. The District Court for the Northern District of Ohio (160 F. Supp. 822) dismissed the action for lack of jurisdiction holding that "vacation allowances, termination allowances, and sickness and death benefits fall within the same category as wages and are uniquely personal to the employees." It further held:

> "Westinghouse is plain authority for the proposition that the Union may not maintain an action in the District Court to collect wages due to employees. *The Union in asking for specific enforcement of the agreement instead of individual judgments in favor of the employees did not change the substance of the action. The result was the same.*" (Italics Ours).

The Court of Appeals for the Sixth Circuit affirmed the judgment of the District Court "upon the findings of fact and opinion of Judge Weick."

In *Local Lodge* 2040, *IAM v. Servel, Inc.*, F. 2d , 44 LRRM 2340 (C.A. 7th Cir. - 1959), the action was brought by two labor unions and a large number of employees against the employer. The complaint charged a breach of the agreement and sought a declaratory judgment that the agreement was then in force and a mandatory injunction ordering the employer to allow its employees to exercise pension and insurance rights provided for therein. It prayed for a money judgment in favor of the employees on their claims for wages arising out of holiday pay allegedly due them for Christmas Day, 1957, and vacation pay for the year 1958. The district court granted the defendant's motion to dismiss the complaint for want of federal jurisdiction, and this judgment was affirmed by the Court of Appeals for the Seventh Circuit. The court held that even though the unions sought a mandatory injunction ordering the employer to comply with the terms of the contract by permitting the employees to exercise pension and insurance rights provided for therein, yet sec. 301 (a) does not confer jurisdiction on the district court to entertain such an action, saying:

> "We can come to no other conclusion but that this is an action for the recovery of individual benefits due employees, and, as such, is clearly within the scope of the holding of the Supreme Court of the United States in Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp., 348 U. S. 437 (1954)."

Significantly, in footnote 4 of its opinion, the court in *Servel* cites with agreement the district court judgment in the instant *Cone Mills* case (166 F. Supp. 654) as being controlled by Westinghouse, and thereby by implication disagrees with the Court of Appeals for the Fourth Circuit which had rendered its opinion herein prior to the decision in Servel by the Seventh Circuit.

For rulings of other courts of appeals showing an apparent conflict with the instant decision of the Court of Appeals for the Fourth Circuit, see *Silverton v. Valley Transit*

*Cement Company, Inc.* 249 F. 2d 409 (C. A. 9th - 1957); *United Steelworkers v. Pullman-Standard Car Mfg. Co.*, 241 F. 2d 547 (C.A. 3rd - 1957); *United Electrical, Radio and Machine Workers of America v. General Electric Co.*, 231 F. 2d 259, 261 (C. A. D. C. - 1956); and *Intl. Garment Workers Union v. Jay-Ann Co.*, 228 F. 2d 632 (C.A. 5th - 1956).

## III. *IF SECTION* 301 *IS HELD TO APPLY TO THIS ACTION, SAME VIOLATES FEDERAL CONSTITUTION.*

The answer of the petitioner in the district court raised as a separate defense that if it be held that the action arises under sec. 301 then that section is invalid, null and void as being in violation of the Constitution of the United States (J. A. pp. 41-2). The constitutional issue was briefed and argued in the district court but it became unneccessary for that court to pass upon the issue because of its disposition of the action on jurisdictional grounds. The constitutional issue was likewise briefed and argued in the Court of Appeals but that court did not directly pass on the issue.

### 1. *Section* 301, *as Construed by the Court of Appeals, Violates Article* III, *Section* 2 *of the Constitution of the United States.*

In *Westinghouse*, the Court did not reach this constitutional issue due to its disposition of the action on jurisdictional grounds (348 U.S. 347, at 459-60, 461). While it is true that in *Lincoln Mills* the majority held that "a case or controversy arising under Sec. 301(a) is, therefore, one within the purview of judicial power as defined in Article 3" (p. 457), yet Mr. Justice Frankfurter was positive in his opinion that Sec. 301 "is unconstitutional in cases such as the present ones where it provides the sole basis for exercise of jurisdiction by the federal courts" (p. 484). Mr. Justice Harlan and Mr. Justice Burton concurred in the result of the majority on the ground that "some federal rights may necessarily be involved in a sec. 301 case."

But the instant action cannot in any sense be said to have arisen under sec. 301 (a), a law of the United States. That law requires an employer and union to bargain collectively and to reduce their agreement to writing, but in no sense of the word does it give legal force and effect to their agreement made following bargaining. That force depends solely upon state law. An independent action such as the instant one seeking the remedy of enforcement of a contract arises only under the contract itself and under the laws of the State of North Carolina, and statutory procedure is provided by the state for the enforcement of such labor arbitration awards (Appendix C).

2. *Section 301, as Construed by the Court of Appeals, Denies Petitioner Equal Protection of the Law and is Therefore in Violation of the Fifth Amendment.*

The federal courts have uniformly dismissed for lack of jurisdiction actions brought under Sec. 301 by an employer against a union to vacate or modify an arbitration award. Thus, in *Mengel Co. v. Nashville Paper Prod. & Spec. Wkrs. Union*, 221 F. 2d 644 (C. A. 6th Cir.), the employer brought an action in the district court to have the arbitration award declared invalid and to enjoin the union from taking any action to enforce the award. The court held that "in our opinion, the present action is not one for violation of a contract within the meaning of Section 301", but rather is an assertion of a right not to be bound by an arbitration award, and therefore dismissed the complaint. Mr. Justice Stewart, then a circuit judge, dissented in the Mengel case. Similarly, in *Int'l. News Service v. Gereczy*, (S. D. N. Y.) 160 F. Supp. 5, the employer brought a proceeding in the state court against the union for an order to vacate an arbitration award rendered in favor of the union. The union removed the action to the federal court on the ground that it asserted a right arising under the laws of the United States, namely sec. 301. The court remanded the action to the state court, holding:

> "The company's motion in the State court attacking the validity of the award is not an action for

violation of a contract between an employer and a labor organization representing an employee, and as such the district court would not have jurisdiction."

Thus, sec. 301 of the Act, as construed by the Court of Appeals in the instant action, grants a labor union the right to enforce an arbitration award in the district court while an employer is required to submit its action for vacation or modification of the same type of award to a state court. This disparate treatment denies employers equal protection of the law. "Construed this way, the Act creates a glaring inequality of treatment between" a union and an employer. The unfairness of this discriminatory procedure seems manifest. The language in the dissenting opinion of Mr. Justice Douglas, the Chief Justice, and Mr. Justice Black in *Union Pacific R. R. v. Price*, 360 U. S. ; 3 L ed. 2d. 1460 (1959), is quite apposite to the instant case:

> "Respondent argues that it would be grossly unfair to construe sec. 3 First (m) so as to deny judicial review to a defeated employee but not to a defeated railroad. That would indeed be the result if an employee asserting a money claim cannot get court review if he loses, while the employer can obtain it if the employee wins. It is difficult for me to believe that Congress designed and approved such a lopsided, preferential system. No rhyme or reason is apparent for such discrimination. The attempt throughout was to equalize the advantages of the contending parties, not to prefer the employer who had long been dominant.
>
> * * * *
>
> "In my view the Court's contrary reading of sec. 3 raises questions of constitutional magnitude concerning the Railway Labor Act. For if an employee is to be denied any review of the Board's decision when the railroad prevails,

> while the latter can obtain judicial review with a jury trial before complying with a Board order, there would appear to be an unjustifiable discrimination in violation of the Due Process Clause of the Fifth Amendment."

It is well known that the National Labor Relations Act was amended in 1947 for the purpose, among others, of equalizing duties and rights between employers and unions. The preamble to the Act expressly provides:

> "An Act to amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers, and for other purposes."

See discussions in *Lincoln Mills* and *Westinghouse* to same effect. It is clear that Congress did not intend by the enactment of sec. 301 in 1947 that the doors of the federal courts should be open to a labor union for the enforcement of an arbitration award and at the same time be closed to an employer for the setting aside or modification of the same award.

## IV. *IMPORTANCE OF THE QUESTIONS PRESENTED WHICH HAVE NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.*

The foregoing questions of federal law are substantial and of importance in the construction and administration of the Labor Management Relations Act, 1947, and should be settled by this Court. Arbitration awards rendered under labor agreements in favor of unions, employers, and employees are numerous, and the number of such awards that have been brought before the state and federal courts for judgments of enforcement, modification, or setting aside has steadily increased over the past ten years. The lower federal courts will more and more be faced with the difficult problems as to whether they have jurisdiction to enforce or set aside some, or all, of these awards, or whether the state courts have jurisdiction, or whether the

federal and state courts have concurrent jurisdiction. Many states presently have statutory provisions for the enforcement of arbitration awards issued in labor disputes similar to those of the State of North Carolina (Appendix C).

An authoritative resolution by this Court of the questions will have immediate purpose far beyond the particular facts and parties here involved. Every employer and labor organization in our economic system is vitally concerned with a determination of these important issues by this Court following adequate consideration of all the implications involved. It is important to unions and employers alike that this Court hear this petition and replace confusion and uncertainty with an authoritative resolution of these far-reaching issues in the field of labor relations.

## CONCLUSION

For the reasons stated, this petition for a writ of certiorari should be granted.

Respectfully sumitted

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